

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

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REGISTRATION & DISCLOSURE

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

FRANCIS KIMARU
(CRD No. 4821531),

Respondent.

Disciplinary Proceeding
No. 20080129321

Hearing Officer – Sara Nelson Bloom

DEFAULT DECISION

July 15, 2009

Respondent is barred from associating with any FINRA member in any capacity for failing to provide requested information, in violation of Rules 8210 and 2110.

Appearances

Robert Moreiro, Esq., New York, New York, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Background

On February 13, 2009, the Department of Enforcement (“Enforcement”) filed a Complaint in this proceeding, attached to this Decision as Exhibit A. The Complaint alleges that Respondent violated Rules 8210 and 2110 by failing to respond to a request for information pursuant to Rule 8210. Respondent did not file an Answer to the Complaint. On May 13, 2009, Enforcement filed a Motion for Entry of Default Decision and Imposition of Sanctions, supported by the declaration of Robert Moreiro, Esq., and 15 exhibits. Respondent did not respond to the Motion. For the reasons set forth below, the Motion is granted.¹

¹ The factual determinations in this Decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declaration and exhibits filed by Enforcement with its Motion.

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II. Respondent's Default

On February 13, 2009, Enforcement served the Complaint and Notice of Complaint on Respondent, by certified and first-class mail, at Respondent's last known residential address as listed in the Central Registration Depository ("CRD address") and two alternative addresses, (the "Fitchburg address" and the "Burlington address"). Respondent did not file an Answer to the Complaint. In the same manner, on March 16, 2009, Enforcement served the Complaint and Second Notice of Complaint on Respondent at the CRD address and the Fitchburg and Burlington addresses. Once more, Respondent did not file an Answer to the Complaint.

Enforcement complied with Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address and the Fitchburg and Burlington addresses, thereby giving Respondent constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted. Pursuant to Rule 9215(f), the Hearing Officer deems the allegations in the Complaint admitted.

III. Jurisdiction

Respondent first became registered with a FINRA member in 2004. From June 2004 through March 2008, Respondent was registered as an Investment Company and Variable Contracts Products Representative with PFS Investments, Inc. ("PFS" or the "Firm"). On March 31, 2008, the Firm filed a Uniform Termination Notice for Securities Industry Registration ("Form U5"), which reported that his employment had been terminated on March 26, 2008, for failing to respond to allegations of possible undisclosed outside business activities. Respondent has not been associated or registered with a FINRA member since that time.

Although Respondent is not currently associated with a member firm, FINRA has jurisdiction to bring this proceeding, pursuant to Art. V, § 4 of FINRA's By-Laws, because (1) the Complaint charges Respondent with failing to comply with requests for information made

during the two-year period following termination of his last registration, and (2) the Complaint was filed within that two-year period.

IV. Violation

A. Failure to Respond

The Complaint alleges that on April 3, 2008, FINRA Staff ("Staff") sent Respondent a Rule 8210 request for information concerning possible outside business activities. Staff sent the request by first-class and certified mail to Respondent's CRD address. When Respondent did not respond by the deadline, Staff sent a second request for the same information, in the same manner, to Respondent's CRD address, on May 6, 2008. Respondent again did not respond. Staff sent a third request for information on August 13, 2008, in the same manner, requesting information regarding Respondent's termination from the Firm, this time to Respondent's CRD address and the Fitchburg address. Respondent did not respond. On September 2, 2008, Staff sent a fourth request for information, in the same manner, to Respondent's CRD address and the Fitchburg and Burlington addresses. Respondent again did not respond.

These Staff served the requests in accordance with Rule 8210(d) by mailing them to Respondent at his CRD address and the Fitchburg and Burlington addresses. Therefore, Respondent is deemed to have received them.

Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information related to any matter under investigation. The Rule serves as a key element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without subpoena power.² Here, although Respondent received valid constructive notice of the Staff's

² See e.g., Dep't of Enforcement v. Valentino, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), aff'd, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because [FINRA] lacks subpoena power over its members, a failure to provide information fully and promptly undermines [FINRA's] ability to carry out its regulatory mandate.") (citation omitted); Joseph G. Chiulli, Exch. Act Rel. No. 42359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for NASD to effectively conduct its investigations, and emphasizing that [FINRA] members and associated persons must fully cooperate with requests for information).

requests,³ he failed to respond.

Therefore, the allegations of the Complaint are sufficient to establish, for purposes of this default decision, that Respondent violated Rules 8210 and 2110.

V. Sanctions

A bar is standard for failure to provide requested information. FINRA Sanction Guidelines ("Guidelines") at p. 35 (2007 ed.). There is no evidence of any mitigating circumstances that would justify a lesser sanction. Therefore, Respondent is barred from associating with any FINRA member in any capacity.

VI. Conclusion

For failing to provide requested information, in violation of Rules 8210 and 2110, Respondent is barred from associating with any FINRA member in any capacity. This bar shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.



Sara Nelson Bloom
Hearing Officer

Copies to: Francis Kimaru (via first-class mail & overnight courier)
Robert Moreiro, Esq. (via first-class mail & electronic mail)
David R. Sonnenberg, Esq. (via electronic mail)

³ See David I. Cassuto, Exch. Act Rel. No. 48087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Disciplinary Proceeding
No. 20080129321

FRANCIS KIMARU
(CRD No. 4821531),

Respondent.

COMPLAINT

The Department of Enforcement alleges:

JURISDICTION

1. Respondent first became registered with a FINRA member in 2004. From on or about June 22, 2004 through on or about March 26, 2008, Respondent was an associated person with PFS Investments, Inc. ("PFS" or the "Firm"), a FINRA member, and his employment was terminated for failing to respond to allegations of possible undisclosed outside business activities. Respondent is no longer associated with a FINRA member.
2. FINRA retains jurisdiction over Respondent pursuant to Article V, Section 4 of FINRA's By-Laws.

CAUSE OF ACTION

(Failure to Provide Information - NASD Rules 8210 and 2110)

3. Enforcement realleges and incorporates by reference paragraphs 1-2 above.
4. On or about March 31, 2008, FINRA initiated an investigation of whether Kimaru failed to disclose outside business activities.
5. On April 3, 2008, FINRA's sent a request letter pursuant to NASD Rule 8210 to Respondent, requesting a detailed written explanation regarding Respondent's alleged outside business activities. The request letter was sent to Respondent's last known residential address, as reflected in the Central Registration Depository ("CRD"), by certified mail return receipt requested and first class mail. The request letter required a response no later than April 17, 2008.
6. The return receipt was returned to FINRA indicating that the letter sent by certified mail was delivered to and signed by Respondent on April 9, 2008. The request letter sent by first class mail was not returned to FINRA.
7. No response to FINRA's request letter sent pursuant to NASD Rule 8210 was received from Respondent.
8. On May 6, 2008, FINRA sent a request letter pursuant to NASD Rule 8210 to Respondent renewing its request dated April 3, 2008 for a written statement. Moreover, the letter informed the Respondent that his failure to comply with this request by May 20, 2008 could result in the institution of disciplinary proceedings against him based on his failure to comply with NASD Rule 8210. The letter was sent to Respondent's last known residential address, as reflected in CRD, by

certified mail return receipt requested and first class mail. The letter required a response no later than May 20, 2008.

9. The letter sent by certified mail was returned to FINRA indicating that it was "unclaimed, return to sender." The letter sent by first class mail was not returned to FINRA.
10. No response to FINRA's request letter was received from Respondent.
11. On August 13, 2008, FINRA sent a request letter pursuant to NASD Rule 8210 to Respondent, requesting a detailed written explanation regarding Respondent's employment termination with PFS, and other matters. The request letter was sent to Respondent's last known residential address, as reflected in CRD, and to an alternative address provided by the Firm (the "Alternative Address"), by certified mail return receipt requested and first class mail. The request letter required a response no later than August 27, 2008.
12. The request letter sent to Respondent's CRD address by certified mail was returned to FINRA indicating that the letter was "unclaimed, return to sender and notified sender of a new address (the "New Address")." The request letter sent by certified mail to the Alternative Address was returned to FINRA indicating that the letter was "unclaimed, return to sender." The letters sent by first class mail were not returned to FINRA.
13. No response to FINRA's request letter pursuant to NASD 8210 was received from Respondent.
14. On September 2, 2008, FINRA sent a request letter pursuant to NASD Rule 8210 to Respondent requesting a detailed written explanation regarding Respondent's

employment termination with PFS, and other matters. The letter was sent to Respondent's last known residential address, as reflected in CRD, the Alternative Address and the New Address, by certified mail return receipt requested and first class mail. The letters required a response no later than September 16, 2008.

15. The return receipt for the letter by certified mail sent to the New Address was returned to FINRA indicating that it was delivered to and signed by Respondent on September 8, 2008. The letter sent certified mail to Respondent's last known residential address, as reflected in CRD, and the Alternative Address were returned to FINRA stating "return to sender." The letters sent by first class mail were not returned to FINRA.
16. No responses to any of FINRA's letters were received from Respondent.
17. By virtue of the foregoing, Kimaru has violated, and is continuing to violate, NASD Rules 8210 and 2110.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed.
- B. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: 2/13/09



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To: Mr. Francis Kimaru



Mr. Francis Kimaru



Mr. Francis Kimaru



(telephone number and email address unknown)